



THE BLOGS

Leonard Grunstein

Jerusalem or Louisiana, the Matter of Title Has Long Been Resolved

The matter of sovereignty over Jerusalem keeps being raised by some, as if it were a novel question of first impression. However, this is just not the case. The matter has been litigated and decided in favor of the Jewish people on more than one occasion over the last approximately 2,349 years.

One of the first such legal actions[i] was brought by descendants of the original Canaanite[ii] inhabitants of the Land of Israel. The Judge was no less a personage than Alexander the Great, himself. The attorney for the Jewish people was a country lawyer named Geviah[iii]. At the trial, he examined the plaintiffs and asked what proof they had to support their claim to title to Israel. They testified the Bible[iv] was their proof of record title. Well, Geviah handily countered that assertion. He cited the very same Bible[v] to defeat the

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Geviyah moved for summary judgment dismissing their claims. He also asserted a counterclaim. Alexander turned to the Canaanite plaintiffs and said he was granting the motion and ruling in favor of the Jewish people, including on Geviah's counterclaim, unless they could provide a compelling and convincing answer to the case presented by Geviah. The Canaanite plaintiffs had no response and so they asked for an adjournment of three days. It just delayed the inevitable, because they could not formulate any answer, since they had none. The fact was the very same Bible they relied on as evidence actually proved title was properly vested in the Jewish people. It also supported the counterclaim asserted by Geviah. Thus, judgment was rendered in favor of the Jewish people both dismissing the Canaanite claim and on Geviah's counterclaim. It would appear that the Canaanites used the three-day adjournment as a subterfuge. It permitted them time to flee the jurisdiction. Perhaps, this was in order to avoid the enforcement of the counterclaim against them.

If, as some Palestinians claim[\[vii\]](#), they are descendants of the Canaanites, then the matter of title to the land of Canaan, including Jerusalem, has already been resolved in favor of the Jewish people. Their ancestors were parties to the lawsuit before Alexander the Great, noted above. The matter was adjudicated; they lost and the Jewish people won. I can't help but wonder if these pretenders to the mantle of the Canaanites realize, they are also thereby assuming the status of being among the most notorious sinners[\[viii\]](#) in the Bible? Have they considered they might also be voluntarily submitting to enforcement of Geviah's counterclaim against the Canaanites? Perhaps so, because some are now arguing they are descendants of the Philistines, instead. However, this claim fares no better in the Bible. The Philistines invaded the Land of Israel and illegally occupied portions. The Jewish people were forced to defend against the Philistine invasion. In a series of climactic battles[\[ix\]](#), David, first as a young

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The descendants of Ishmael and Keturah, as plaintiffs, also brought a legal action[x] against the people of Israel. Once again, Alexander the Great was the judge and Geviah was the attorney for the Jewish people. The plaintiffs argued that they too were children of Abraham like Isaac and cited the Bible[xi] in support of their position. Therefore, they asserted they too were entitled to a share of the Land of Israel, as an inheritance from their father Abraham. Indeed, the children of Ishmael argued they were entitled to a double portion, as the first-born[xii].

At trial, Geviah also adduced evidence from the Bible[xiii]. In essence, it records that Abraham gifted all his property during his lifetime. He gave Isaac all he owned. He gave his other children gifts of money[xiv] and/or ancestral property[xv] in the land of the east. He also sent them there, far away from Isaac and the Land of Israel, because he wanted to avoid any disputes or quarrels about inheritance among his sons, after he passed on[xvi]. Hence, he settled all matters relating to his property during his lifetime, preferring not to rely on a will and someone else having to carry out his instructions[xvii]. Thus, Geviah asserted, as the Bible records, title to the Land of Israel belonged wholly to Isaac and his progeny, the Children of Israel. Once again, Geviah won the lawsuit.

If, as many Palestinians claim, they are descendants of Ishmael[xviii], then the matter of title to the land of Canaan, including Jerusalem, has already been resolved in favor of the Jewish people. Their ancestors were parties to the lawsuit before Alexander the Great. The matter was adjudicated; once again, they lost and the Jewish people won. In this regard, it should also be noted, the Qur'an[xix] itself recognizes that the Land of Israel belongs to the Jewish people.

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created the world. Thus, if anyone were to claim the Jewish people took the Land of Israel by force from the Canaanites, the Jewish people could respond G-d created the entire Earth, it belongs to G-d and it was G-d, who gave the Land of Israel to the Jewish people[xxi].

I am reminded of a land title legend that one of my mentors related to me when I was a very young, newly minted, real estate attorney. It involved an opinion of title issued by a Louisiana attorney to a bureaucrat at the FHA. It seems that the federal official did not accept title being traced back only 194 years; he wanted it traced back to its origin. In a somewhat sarcastic reply, he reportedly proceeded to discuss the origin of title to the land, for the edification of the uninformed FHA bureaucrat, in the manner paraphrased below. He noted, as most school children know, the United States acquired ownership of Louisiana from France, in 1803, in what is commonly known as the Louisiana Purchase. France acquired the land by Right of Conquest from Spain. It in turn acquired it by Right of Discovery in the year 1492, through the efforts of a sea captain named Columbus. He did this in the course of his mission seeking a new route to India, as authorized by Queen Isabella of Spain. Before the Queen granted this authority, she obtained the sanction of the Pope. In essence, his sanction, as the supreme religious authority in Europe, was deemed to represent approval of G-d for the expedition. Of course, the Louisiana attorney declared, it is commonly accepted that G-d created the world and it is safe to assume that Louisiana was a part of the world. The attorney concluded that G-d would, therefore, be the owner of origin. He said he hoped to (expletive deleted), the FHA bureaucrat would find this original claim to be satisfactory and his client could now have his (expletive deleted) loan.

Whether this legendary tale was true or not, it provided a real-world context for

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Rashi's times. He lived in the period of the Crusades, when European Christian powers fought with Islamic ones over control of the Land of Israel. Jews were living there at the time and, thereafter, to date. They also lived there for thousands of years before that, as noted above. This despite all the hardships they have endured. Empires rose and fell. A good portion of the Middle East, including the Land of Israel was conquered and controlled by the Ottoman Empire, during the period 1517-1917. The Ottoman Empire was on the losing side of World War I. This set the stage for the establishment of new or reconstituted sovereign states, out of the portions of its former empire, which it ceded to the victorious allies, as summarized below.

Today, the Jewish State of Israel governs the Land of Israel. However, some things have not changed. As Rashi anticipated, there are still those who continue to rehash the same old bogus claims that they and not the Jewish people are the rightful owners of the Land of Israel.

Having summarized how these title claims were adjudicated in ancient times, we come now to the early 20th Century version. This time the context was the end of World War I. Representatives of the victorious allies, including the United States, Britain, Italy, France and Japan, met in Paris in 1919. They had triumphed over the central powers, Germany, the Austrian-Hungarian Empire and the Ottoman Empire and they received presentations by various delegations of all sorts of claims to lands previously comprising a part of the German, Ottoman and Austrian-Hungarian Empires. Thus, for example, in Europe, Poland was reborn, the borders of Czechoslovakia and Romania were fixed and recognized and the country of Yugoslavia was created. The Jewish people also presented their claim to an area that had been a part of the Ottoman Empire, which was referred to as Palestine, at the time. The Jewish

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Thereafter, in 1920, the Supreme Council of Allied Powers met in San Remo, Italy, in order to resolve many of these claims. The context is important. The Central Powers ceded control of portions of their Empires to the Allied Powers, under the Peace Treaties signed with them. This included the area referred to as Palestine (now the country of Israel), as well as, the areas that would become Turkey, Armenia, Iraq, Syria, Lebanon and Saudi Arabia.

Under International Law, the Supreme Council had the power to dispose of these various territories that were formerly a part of the Ottoman Empire. It was in this capacity that the Supreme Council dealt with claim of the Jewish people to an area referred to as Palestine (now the country of Israel). The claim was based on their historic title to the Land of Israel. The Jewish people sought to reconstitute their national home in Palestine, as an autonomous commonwealth. The Arab people also presented their claims.

The Minutes of the Meeting of the Supreme Council[\[xxii\]](#) on the matter of Palestine are most illuminating. They reflect that representatives of the United States, British Empire, France, Italy and Japan were present. The meeting also considered the matter of determining the borders of Turkey and Armenia, as well as, issues related to Syria and Mesopotamia (current day Iraq).

The Supreme Council Minutes record the discussions regarding Palestine and it being a national home for the Jews. Reference was made to the new projected State and its borders. Consideration was also given to the civil and religious rights of the non-Jewish communities residing in Palestine. The Supreme Council considered the claims of the various parties, deliberated and decided title to Palestine was vested in the Jewish people[\[xxiii\]](#). It was agreed that a national home for the Jews would be established there and a mandatory would

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and the terms of the mandate were approved, as noted below. The effect was to confirm, as a matter of International Law, the establishment of Palestine as a national home for the Jewish People.

The Council of the League of Nations^[xxiv] adopted the San Remo resolution on Palestine. It thereby became an international agreement, binding on all of the member countries, which, in effect, confirmed title to Palestine in the people of Israel, under International Law. It recognized the historical connection of the Jewish people with Palestine and acknowledged the grounds for reconstituting their national home in that country. The use of the term country in the Council resolution is cogent. It was no longer referred to as a geographical territory in the former Ottoman Empire; rather, Palestine was now referred to as a country. The sovereignty and legal title to the country of Palestine was vested in the Jewish people.

Article 5 of the Council's resolution provided that no Palestine territory shall be ceded or leased to, or in any way placed under the control of the government of any foreign Power. In essence, the title to the country of Palestine granted to the Jewish people at San Remo could not be revoked or granted to another by the Mandatory authority or the League. This legally includes the UN, as the successor to the League. Palestine belonged to the Jewish people.

Article 4 of the resolution provided for a Jewish agency to be recognized as a public body and putative government to assist in the establishment of the Jewish national home, including taking part in the development of the country. Article 6 of the resolution provided for settlement of Jews on the land, including State lands. Article 11 of the resolution provided for the Jewish agency to be able to construct or operate public works, services and utilities and

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Jewish communities in the country were not to be prejudiced and the granting instrument so provides.

The resolution of the Supreme Council of Allied Powers at San Remo was also endorsed in the Anglo-American Treaty on Palestine^[xxv]. It actually incorporated the text of the resolution of the Council of the League of Nations, referred to above. The San Remo resolution was also a part of the Treaty of Sevres^[xxvi] with the Ottoman Empire and, in effect^[xxvii], ratified by the Treaty of Lausanne of 1923 with Turkey.

Jerusalem was an integral part of Palestine and it is, therefore, fully a part of the Land of Israel. There was no carve-out for Jerusalem in any of the foregoing sources of International Law confirming title to the country of Palestine in the Jewish people. To be clear, there were provisions made regarding respecting the rights of worship at the Holy Places. These, though, are indicative of sovereignty to Jerusalem, like the rest of Palestine, being fully vested in the Jewish people. Otherwise, why speak of respecting only certain rights? Indeed, the fact remains, it is only under Jewish sovereignty and control that these rights were and continue to be respected.

The UN Charter^[xxviii] did not change the legal status of Jerusalem, as being a part of the Land of Israel, nor did the invasion by Jordan of the State of Israel in 1948. Jordan illegally occupied the eastern portion of Jerusalem, including the Old City, containing the Temple Mount and Western Wall, as well as, other areas of what was known as Mandatory Palestine. This state of affairs continued until June of 1967, when, during the Six Day War, Jordan attacked Israel. In this defensive war with Jordan, Israel re-captured the eastern portion of Jerusalem and the other areas west of the Jordan River, which had been unlawfully

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recaptured and the extension of municipal boundaries, consistent with the foregoing. The Knesset later adopted a Basic Law: Jerusalem^[xxx], which declared that the complete and united Jerusalem was the capital of Israel.

The United States recognized that Israel had the right, under International Law and custom to designate its own capital, in a Law^[xxxi] passed in 1995. The US Law also recognized that the City of Jerusalem had been the capital of the State of Israel since 1950. It also found that Jerusalem was a divided city, from 1948-1967 and Israeli citizens of all faiths, as well as, Jewish citizens of all states had been denied access to the holy sites in the area controlled by Jordan. The Law went on to find Jerusalem had been re-united during the Six Day War of 1967 and that since then persons of all religious faiths had been protected, respected and guaranteed full access to the holy sites within the city.

There have been a number of cases before the Supreme Court of Israel that have dealt with the legal status of Jerusalem and other areas recaptured from Jordan, in 1967. Israel has a much respected and admired independent judiciary, with a well-deserved reputation for dispensing genuine justice in an unbiased manner. The cases summarized below are no exception. They are a testament to the independence of the Israeli judiciary and their dedication to the rule of law and the highest standards justice, without bias or deference, no matter who appears before the court.

On example is the case of Temple Mount Faithful, et al vs. Attorney General, et al^[xxxii]. In that case, the Supreme Court of Israel, in a well-reasoned opinion, issued in 1993, held that Jerusalem, including the area of the Temple Mount, was a part of the State of Israel. It also held that the laws, jurisdiction and administration of the State of Israel applied to Jerusalem.

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homes in an area called Amona. It was situated on private land, which was claimed by plaintiff owners from the adjacent town of Silwad. The Court found in favor of the plaintiffs and ordered the homes constructed on the site demolished and vacated. In a separate case before the Jerusalem Magistrate Court[xxxiv] the plaintiffs also sued for monetary compensation. The case was settled in June of 2014, reportedly, for the sum of 300,000 Shekels[xxxv].

The legal status of Jerusalem was also considered by the French Court of Appeals of Versailles, in the case of PLO et al vs. Societe Alstom Transport SA, et al[xxxvi]. Mahmoud Abbas appeared for the PLO, as President of the Executive Committee. The decision the Court issued, in 2013, once again confirmed that the State of Israel was vested with sovereignty and title to Jerusalem, under International Law. The defendant was involved with the tramway in Jerusalem. The PLO alleged the State of Israel was occupying so-called Palestinian territory illegally and was continuing with illegal settlement through the building of the Jerusalem tramway. It claimed a breach of Article 49 of the Fourth Geneva Convention, which provides that an Occupying Power shall not forcibly transfer parts of its own civilian population into the territory it occupies. It also claimed a violation of Article 53, which prohibits an Occupying Power destroying real or personal property belonging to individuals, the state or other public authorities, except when rendered necessary by military operations. It was claimed that work done on the public road for the construction of the light rail violated this provision.

The French Court of Appeals rejected these as well as the other claims of the plaintiffs. The Palestinians had no legal right to Jerusalem protected by International Law and Israel was legally entitled to build the light rail in the area. It also held that the PLO and Palestinian Authority were not States nor

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determinative for purposes of legally establishing the purpose or lawfulness of a party's actions. While, these kinds of vocal assertions may make for good propaganda on the lecture circuit, they do not constitute legal arguments. The Court was interested in law and real facts, established by probative evidence, not speculations or mere assertions. Thus, the Court would not ascribe a nefarious political motive to the actions of the State of Israel, just because the plaintiffs said so. The Court also caustically noted that Article 53 is about bombing and Jerusalem was not being bombed, by building a tramway. The Court held the State of Israel had a legal right to build the light rail. Indeed, in point of fact, it was constructed for the good purpose of bettering Jerusalem, which it lawfully governed.

It should also be noted the unfounded assertion that Section 49 somehow applies to Israel and Jerusalem is a particularly cruel and ironic canard. This provision was intended^[xxxvii] to prevent a recurrence of such abhorrent actions as Nazi Germany's forcible: a) expulsion from Germany of its Jewish citizens and resettlement in concentration and death camps in occupied Poland; and b) impress of citizens of the countries it conquered as slave laborers in Nazi Germany. Thus, Section 49 expressly requires a "forcible" transfer of an Occupying Power's civilian population to a territory that it occupies. It is just specious to suggest that the citizens of Israel, who have moved to the united city of Jerusalem, are doing so because the State of Israel forcibly expelled them and transferred them to Jerusalem. Moreover, Jerusalem is not an occupied territory nor is Israel an Occupying Power. It was Jordan, which had unlawfully taken and occupied the eastern portion of Jerusalem, including the Old City. Israel fought a lawful defensive war against Jordan and recaptured territory, which had originally been vested in the Jewish people of Israel, as detailed above^[xxxviii].

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Indeed, as Prince Bander of Saudi Arabia so well said, Yasir Arafat committed a crime against the Palestinian people in not accepting Ehud Barak's exceedingly generous offer, under the Clinton initiative in Camp David, in 2000[xxxix].

However, this is not something that can be imposed on Israel against its will. Neither force of arms nor UN resolution can legally accomplish this; it requires Israel's voluntary acceptance.

It seems that the old lawyer's adage, about when you have the law, argue the law, when you have the facts, argue the facts and when you have neither, ask for an adjournment, is no longer relevant. Instead, some choose to proceed extra-judicially, by threatening and actually committing violent acts of terrorism, invoking BDS or attempting to control public opinion, through Soviet style propaganda and an apparatus of so called NGO's. However, this is not justice; nor is loudly proclaiming slogans like justice for Palestine. They may be designed to signal virtue, but their goal is not virtuous. Rather, they seek the destruction of the State of Israel and are nothing more than a new veiled and sometimes overt expression of anti-semitism. Talk about disinformation campaigns by Russia and others; this is not something new. We lived through it in the cold war with the Soviet Union and its proxies, including the period of the 1960's-1980's. It lives on in the rhetoric of the PLO, an original proxy of the former Soviet Union and in its new incarnation, as the PA.

I would have thought that many of these lessons of the cold war would have been assimilated and taught to the new generation in school. However, it appears that for many, the opposite is true. They are being fed a false narrative about recent history. This includes Israel's 1967 defensive war for survival. Many of us are still around to remember firsthand what happened. It's time for those with genuine knowledge to speak out. We can't allow the apparatchiks to

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President Trump's action, formally recognizing Jerusalem as the capital and finally deciding to move the U.S. Embassy there should inspire us. I've written him a personal thank you note and recommend everyone do so, as well. But, more than that, it time to take up the cudgel, as well. Let's study, learn, and speak the truth about Israel's absolute right to exist in peace. We cannot afford to be complacent or allow misleading statements, canards and flat out untruths to go unchallenged. Let's join together and dedicate ourselves to supporting Israel. Now is the time to redouble our efforts. Join and support AIPAC and keep the US-Israel relationship strong.

[i] Megillat Ta'anit, Sivan 25, Babylonian Talmud, Tractate Sanhedrin, at page 91a and Bereishit Rabbah 61.

[ii] See Jerusalem Talmud, Tractate Sheviit 6:1, at page 18a of the Zhitomir edition, as well as, the Maharsha, in his commentary on Sanhedrin text noted above. The plaintiffs were descendants of the Girgashites, who left the land of Canaan, as Joshua and the Jewish people entered it. They resettled in a country, known as Afrikiya (see the Jerusalem Talmud Sheviit text, noted above). They are referred to as the children of Afrikiya in the Sanhedrin text noted above and as Canaanites in the Megillat Ta'anit and Bereishit Rabbah texts noted above.

[iii] He is referred to as Geviah ben Pesisa in Tractate Sanhedrin and Megillat Ta'anit and Geviah ben Kosem in Bereishit Rabbah.

[iv] Numbers 34:2. It is interesting to note that this Biblical verse cited by the Canaanite plaintiffs actually defeats their claim. It describes how the land of

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[v] Genesis 9:25. The Maharsha, in his commentary on the Sanhedrin text noted above, also explains there are other verses in the Bible evidencing the Jewish people's title to the Land of Israel. Some examples are cited below. He also refers to the Rashi commentary on Genesis 1:1, summarized below.

[vi] See, for example, Deuteronomy 7:1 and 20:16.

[vii] See Camera, February 19, 2014, Saeb Erekat's Fabrication Exposes 'Palestinian Narrative'.

[viii] See, for example, Deuteronomy 9:5, Leviticus 18:24-25 and Deuteronomy 18:9, 12.

[ix] See, for example, Samuel I-17: 26 and 19:8, as well as, Samuel II-8: 1.

[x] Supra, Note 1.

[xi] Genesis 25:12, 19.

[xii] Deuteronomy 21:17.

[xiii] Genesis 25:5-6.

[xiv] See Ibn Ezra, as well as, Rashbam commentaries on Genesis 25:6.

[xv] See Chizkuni commentary on Genesis 25:6

[xvi] See Radak and Sforno commentaries on Genesis 25:6.

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[xviii] See The Arab Claim to Palestine because they are descendants of Ishmael, by Robert Morey.

[xix] Qur'an 5:21 and 17:104.

[xx] In his commentary on Genesis 1:1.

[xxi] See Genesis 17:8 and Deuteronomy 30:3-5

[xxii] Minutes of Palestine Meeting of the Supreme Council of The Allied Powers Held in San Remo at the Villa Devachan-April 24,1920.

[xxiii] See Sovereignty Over the Old City of Jerusalem: A Study of the Historical, Religious, Political and Legal Aspects of the Question of the Old City, by Jacques Paul Gauthier (2007).

[xxiv] By Resolution, dated July 24, 1922.

[xxv] Signed on December 3, 1924 and ratified by the U.S. Senate on February 20, 1925.

[xxvi] Article 95.

[xxvii] Article 16.

[xxviii] Article 80.

[xxix] Volumes 1-2 of Laws, 1947-1974, Part IV. Jerusalem and the Holy Places,

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subsections 8a-b, which, among other things, enabled enlargement of the area of the municipality.

[xxx] On July 30, 1980, published in Sefer Ha-Chukkim No. 980 (1980)

[xxxi] Public Law 104-45, dated November 8, 1995 and known as the Jerusalem Embassy Act of 1995.

[xxxii] Temple Mount Faithful-Amutah, et al vs. Attorney General, Inspector General of the Police, Mayor of Jerusalem, Minister of Education and Culture Director of the Antiquities Division, Muslim WAQF (H.C. 4195/90). The Supreme Court, sitting as the High Court of Justice (highest court of the State of Israel) on this case, was comprised of Justices Menachem Elon, Aharon Barak and Gavriel Bach. Their decision was dated September 23, 1993. An English translation of the decision was published in 45 Cath. U. L. Rev. 866 (1996).

[xxxiii] Supreme Court of Israel, sitting as the High Court of Justice, decided on December 12, 2014 (H.C. 9949/08).

[xxxiv] Index No. 22252/08.

[xxxv] See article entitled, Israel to reimburse Palestinians who lost land to Amona outpost, by Tovah Lazaroff, in the Jerusalem Post, dated: June 27, 2014.

[xxxvi] France-Palestine Solidarite, et ano vs. Societe Alstom Transport SA, Cour D'Appel De Versaille, Code nac:59a (R.G. No. 11/05331, decided March 22, 2013.

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[B. Johnson](#). See also International Committee of the Red Cross (ICRC) Commentary to the Fourth Geneva Convention of August 12, 1949 (edited by Jean S. Pictet), at pages 278-279 (1958), as well as, International humanitarian law, ICRC and Israel's status in the Territories, by Alan Baker, International Review of the Red Cross, Volume 94, Number 888 (2012).

[\[xxxviii\]](#) See Historical Approach to the Issue of Legality of Jewish Settlement Activity, by Eugene W. Rostow, in New Republic, on April 23, 1990.

[\[xxxix\]](#) See Israel's Liaison to Its Neighbors: Saudi Prince Bandar, by Aluf Benn, dated March 2, 2007, in Haaretz. See also Yasser Arafat's widow admits Palestinian terror campaign in 2000 was premeditated, by Jamie Weinstein, dated December 28, 2012, in the Daily Caller.

ABOUT THE AUTHOR

Leonard Grunstein, a retired attorney and banker, founded and served as Chairman of Metropolitan National Bank and then Israel Discount Bank of NY. He also founded Project Ezra and serves on the Board of Revel at Yeshiva University and the AIPAC National Council. He has published articles in the Banking Law Journal, Real Estate Finance Journal and other fine publications.

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